



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0608]

RIN 1625-AA11

Regulated Navigation Area; Fourth of July, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is temporarily establishing a regulated navigation area on Biscayne Bay in Miami, Florida for the Fourth of July, 2016. This regulation is necessary to protect the public during upcoming Fourth of July events, a period during which a significant concentration of persons and vessels historically operate on the waters of Biscayne Bay. To ensure the public's safety, all vessels within the regulated navigation area are required to transit the regulated navigation area at no more than 15 knots; are subject to control by the Coast Guard officers and petty officers; and are required to follow the instructions of all law enforcement vessels in the area.

**DATES:** This rule is effective on July 4th, 2016, from 7 p.m. until 11:59 p.m.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0608 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Benjamin Colbert, Sector Miami Waterways Management Branch, U.S. Coast Guard; telephone 305-535-4317, email Benjamin.R.Colbert@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

Recreational boating traffic on the waters of Biscayne Bay increases significantly during Fourth of July activities. In recent years, recreational vessel speed, especially in crossing navigational channels, contributed to incidents that resulted in severe injury and death. This regulation seeks to increase public safety on the waters of Biscayne Bay during the 4th of July by requiring vessels to travel at a maximum speed of 15 knots. It also subjects recreational vessels to the control by Coast Guard officers and petty officers as well as local law enforcement authorities.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking

(NPRM) with respect to this rule because publication of an NPRM would be impracticable.

During meetings with local law enforcement, only weeks prior to the holiday, it was decided that a regulated navigation area be implemented for the holiday. Local law enforcement expressed opinion that previous implementation of this rule resulted a substantially safer waterway. This late decision makes proposing the rule for comment impracticable.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the reasons discussed above.

### **III. Legal Authority and Need for Rule**

The legal basis for this proposed rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1. The District Seven Commander has determined that potential hazards associated with Fourth of July events pose a safety concern for anyone on the waters of Biscayne Bay. The purpose of this rule is to ensure safety of vessels and the navigable waters in Biscayne Bay before, during, and after the July 4th events.

### **IV. Discussion of Comments, Changes, and the Rule**

This rule establishes a regulated navigational area from 7 p.m. to 11:59 on July 4th, 2016. This regulated navigation area will encompass certain waters of the Biscayne Bay between Julia Tuttle Causeway Bridge and Cutler Bay, Florida. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after Fourth of July events.

All vessels within the proposed regulated navigation area are: (1) Required to transit the regulated navigation area at no more than 15 knots; (2) subject to control by Coast Guard officers

and petty officers; and (3) required to follow the instructions of all law enforcement vessels in the area.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Although the regulated navigational area covers most of Biscayne Bay, it is only enforced for five hours on a holiday evening. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to enter the regulated navigational area.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated navigation area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0608 to read as follows:

§ 165.T07-0608 Regulated Navigation Area; Fourth of July, Biscayne Bay, Miami, FL.

(a) Regulated area. The regulated navigation area encompasses all waters of Biscayne Bay between Tuttle Causeway Bridge and Black Point contained within an imaginary line connecting the following points: beginning at Point 1 in position 25°48'38"N, 80°10'40"W; thence east to Point 2 in position 25°48'38"N, 80°10'30"W; thence southwest to Point 3 in position 25°46'41"N, 80°10'54"W; thence southeast to Point 4 in position 25°46'17"N, 80°10'43"W; thence southwest to Point 5 in position 25°45'05"N, 80°10'50"W; thence southeast to Point 6 in position 25°44'47"N, 80°10'44"W; thence southeast to Point 7 in position 25°43'29"N, 80°09'37"W; thence southwest to Point 8 in position 25°42'39"N, 80°10'35"W; thence southwest to Point 9 in position 25°31'11"N, 80°13'06"W; thence northwest to Point 10 in position 25°31'31"N, 80°17'48"W; thence northeast to Point 11 in position 25°43'25"N, 80°13'17"W; thence northeast to Point 12 in position 25°43'59"N, 80°12'04"W; thence northeast to Point 13 in position 25°44'46"N, 80°11'23"W; thence northeast to Point 14 in position 25°46'10"N, 80°10'59"W; thence northwest to Point 15 in position 25°46'20"N, 80°11'04"W; thence northeast to Point 16 in position 25°46'44"N, 80°10'59"W; thence northwest to Point 17 in position 25°47'15"N, 80°11'06"W; thence northeast to Point 18 in position 25°47'24"N, 80°11'00"W; thence north to Point 19 in position 25°47'36"N, 80°11'00"W; thence back to origin. All coordinates are North American Datum 1983.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.



(c) Regulations. All vessels within the regulated area are required to transit at no more than 15 knots; are subject to control by the Coast Guard officers and petty officers; and must follow the instructions of designated representatives.

(d) Enforcement period. This section will be in enforced with actual notice from 7 p.m. to 11:59 on July 4, 2016.

Dated: June 24, 2016.

A. J. Gould,

Captain, U.S. Coast Guard,

Acting Commander, Seventh Coast Guard District.

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